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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,809	11/12/2003	C. Allen Smith	KCX-62-DIV (13267.1)	6952
22827	7590	11/18/2008		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER	
			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			11/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/706,809

**Applicant(s)**

SMITH ET AL.

**Examiner**

Elizabeth M. Cole

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

1. Claims 9-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for an elastomeric polyolefin having a density of less than 0.885 grams per cubic centimeter and a peak melting point range of about 49-about 85 degrees Celsius. Page 14 of the specification discusses plastomers having a density range of from about 0.865 to about 0.889 grams per cc and a peak melting point range of about 49-85 degrees C, but does not disclose such plastomers having the claimed peaking melting point range and "a density of less than 0.885 grams per cc".
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaoka et al, U.S. Patent No. 4,722,973 in view of Stehling et al, U.S. Patent NO. 5,382,631. Yamaoka discloses a thermoplastic elastomer composition comprising a blend of two polyolefins. One polyolefin is a hard (non-elastomeric) ethylene alpha olefin copolymer having a melt index of 0.01-100 g per cc and a density of 0.860-0.910 (see col. 6, lines 6-38) and the other is a soft (elastomeric) ethylene alpha olefin copolymer) having a density of 0.863 g per cc, (see example 1). The non-elastomeric component can be

present in amounts of 10-90% by weight and the elastomeric component can be present in 90-10% by weight. Yamaoka et al teaches that the elastomeric component should have a peak temperature of 60-70 degrees C. See col. 7, lines 1-12. Yamaoka differs from the claimed invention because it does not specify that the composition can be formed into nonwovens and does not disclose the claimed molecular weight distribution. . Stehling discloses ethylene polymer blends which may comprise components having a narrow molecular distribution. See col. 6, lines 8-col. 9, line 7. Stehling teaches that the narrow molecular distribution of the blend improves the properties of the blends. Therefore, it would have been obvious to one of ordinary skill in the art to have employed polymers which had a narrow molecular weight distribution as taught by Stehling in the blend of Yamaoka, in order to produce ordinary having improved properties as taught by Stehling. Stehling discloses that ethylene polymer blends can be formed into meltspun, (i.e. spunbond) and meltblown fabrics. See col. 23, line 38-col. 24, line 48. Spunbond fabrics comprise continuous filaments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the blend of Yamaoka to form nonwoven fabrics as taught by Stehling, in view of the art recognized suitability of elastomeric blends of ethylene polymers for use in forming such fabrics.

3. Applicant's arguments with respect to claims 9-22 have been fully considered but are not persuasive. Applicant argues that Yamaoka teaches the melting point of the ethylene alpha olefin copolymer should not be lower than 100 degrees C, ( col. 6, lines 6-38). However, Yamaoka teaches a blend of two alpha olefin copolymers. In this

passage Yamaoka is referring to the hard, (non elastomeric) component of the blend, not to the elastomeric component, (what Yamaoka calls component A). Component B, which corresponds to the claimed elastomeric component, has a peak temperature of 60-70 degree C and meets the claimed density. See col. 7, lines 1-12 and example 1. Therefore, the rejection is maintained.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

e.m.c